IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 35124 of 2007(F)

AGAINST THE ORDER IN EA.86/07 IN EP.528/03 IN OS.498/2002 of MUNSIFF COURT, CHITTUR

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PETITIONER:

SHEIK MUSTHAFA, S/O. SHAHUL HAMEED,
ATTAYAMPATHY, MUTHALAMADA VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS:

ARUMUGHAN, S/O. NANJAPPA KOUNDER,
MOOVULAKAPUDUR, MUTHALAMADA AMSOM, CHITTUR TALUK,
PALAKKAD DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

W.P.(C)NO. 35124 of 2007 -F

Dated this the 28th day of November, 2007.

JUDGMENT

This writ petition is preferred against the order of the Munsiff, Chittur whereby the court found that the contention of the judgment debtor that he has no means cannot be accepted. It is profitable to refer first to the order of this Court which was passed on 30th October, 2006. A learned Judge of this Court held that in the light of the evidence on record, I find no infirmity in Ext.P1 order warranting interference in exercise of the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India. So far as the plea that he is a heart patient, this Court held that when he is brought under arrest, he can raise the plea under Rule 40 of Order XXI. Again there was a submission by the counsel for the petitioner at that point of time that the judgment debtor will deposit the amount within one month and till then, he may not be arrested. The Court believed the same and gave a direction to the court below not to execute the warrant of arrest for a period of one month. Now when the matter goes back, the contention is raised again that he is not having any means and he

is a heart patient. There has been a finding in another case regarding no means and therefore, the E.P has to be dismissed. The learned counsel has also brought to my attention a decision of this Court reported in **Xavier v. Canara Bank Ltd.** (1969 KLT 927). I feel that the following sentences have to be extracted for a proper appreciation of the matter.

> "A finding by Court of the means of judgment debtor and a refusal or neglect to pay by him can be relied upon in subsequent stages of the execution unless the judgment debtor proves that there has been a substantial change, for the worse in his financial position. If after the previous order upholding the judgment debtor's financial ability and indifference a substantial change in his economic circumstance has taken place, a fresh investigation into his ability and indifference has to be made and found before he can be sent to jail".

At no point of time, the judgment debtor has got a case that he had the means to pay the decree debt and on account of certain developments, he has become Bankrupt and, therefore, he cannot pay the decree debt. On 30th October, 2006, he undertakes before the High Court that he will pay the amount within one month. But, he goes back to the trial court and contends for the position of no means. What had happened in between 30th October, 2006

till the application is filed is a matter which is within the exclusive knowledge of the petitioner that he has to prove to the satisfaction of the court that due to some unwarranted situation he had become bankrupt and there is a change of circumstance. Absolutely no materials are available to prove the same and it is quite unfortunate to say that a person who got the benefit of exercise of the extra ordinary jurisdiction of this Court and got one month's time to pay the amount suddenly turns and wants again to raise the plea of no means which this Court held cannot be interfered with. Less said about better, I do not find any merit in the writ petition and, therefore, it is dismissed.

M.N. KRISHNAN, JUDGE.

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